

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Petition of Northland Networks, Ltd., Pursuant to)
' 252(e)(5) of the Communications Act for Expedited) WC Docket No. 03-242
Pre-emption of the Jurisdiction of the New York State)
Public Service Commission Regarding Interpretation)
and Enforcement of an Interconnection Agreement)

REPLY COMMENTS OF NORTHLAND NETWORKS, LTD.

Northland Networks, Ltd. ("Northland") respectfully files these Reply Comments in response to the Comments filed by Verizon New York Inc. ("Verizon") on December 12, 2003.¹ For the reasons set forth below, the Commission should disregard Verizon=s objection to Issue 4 as framed by Northland, and should include that issue in an order granting Northland=s request for expedited pre-emption of the New York State Public Service Commission ("PSC").

Verizon endorses Northland=s request for pre-emption in light of the New York PSC=s failure to act," and points out that it has itself sought pre-emption of the PSC=s jurisdiction in identical cases. (Verizon Comments, pp. 1-2). Verizon agrees that Issues 1-3 listed in Northland=s petition are appropriate for resolution by the

¹ Northland is not aware of any comments having been filed besides those of Verizon.

Commission, but objects (a) to proposed Issue 4 and (b) to an expedited ruling by the Commission on the Petition for Pre-emption. Neither of those two objections is valid.

Verizon does not disagree with the relevance of the underlying question set forth in Issue 4, but instead believes that issue is already subsumed in Issues 1 through 3, and that “the Commission’s determinations with respect to Issue 1 through 3 necessarily will obviate Issue 4.” (Verizon Comments, page 2). Verizon also asserts the language used to frame Issue 4 is “argumentative” and “assumes the existence of facts that it will be Northland’s burden to prove....” (Verizon Comments, page 3).

In reality, Verizon’s objection to Issue 4 is based upon its reluctance to have the Commission pass on specific conduct (or more correctly, non-conduct) cited by Northland, *i.e.* Verizon’s failure to pursue remedies available to it to require Northland to execute an amendment to the parties’ interconnection agreement. That particular issue may well be critical to this Commission’s determination on the underlying dispute - the amount of reciprocal compensation to which Northland is entitled.

Should the Commission resolve Issue 1 by declaring the ISP Remand Order was not automatically incorporated into the Inter-Carrier compensation provisions of the interconnection agreement between Northland and Verizon (as Northland urges the Commission to rule), the next question becomes when a change in compensation rates, if any, would take effect. In answering that question, this Commission should consider the actions of the parties, particularly whether Verizon - the party which sought (but then abandoned its effort) to require execution of an amendment - is subject to an argument of

laches or equitable estoppel.

Northland does not believe its phrasing of proposed Issue 4 is either argumentative or unfairly prejudicial to either party. Issue 4 simply sets forth a particular factual pattern (Verizon=s failure to pursue its remedies to require the execution of an amendment to the Interconnection Agreement), and asks the Commission to determine whether that specific conduct would affect the amount of reciprocal compensation owed Northland.

As the complaint to be filed with this Commission will make clear (should pre-emption be granted), the bottom line issue here is the amount of reciprocal compensation to which Northland is and has been entitled. The four issues, particularly Issue 4, as proposed by Northland should lead to an orderly and sequential determination.

Verizon=s objection to the Commission expediting its ruling on this petition is without merit. While it is correct that Northland waited after the New York PSC stated it would not adjudicate this dispute before seeking pre-emption, Northland had a very good reason for doing so. Northland was aware that a similar petition to pre-empt the jurisdiction of the PSC, on the very same issues of concern to Northland, had already been granted.² Northland was also fully aware that the specific issue between Verizon

² On September 6, 2002, MCImetro Access Transmission Services LLC (“MCImetro”) filed a Petition for Pre-Emption of the New York PSC on issues comparable to those raised herein by Northland. Pre-emption was granted by this Commission on November 26, 2002, through issuance of a Memorandum Opinion and Order in CC Docket No. 02-283.

and Northland was already squarely in front of this Commission. Thus, Northland believed that the Commission's resolution of the issue in the MCImetro matter would resolve the issue between Northland and Verizon, thereby obviating the need for Northland to file a second, essentially duplicative petition. Rather than unnecessarily expend resources, and burden this Commission, Northland was simply awaiting a determination in the MCImetro proceeding.

However, when it became clear the MCImetro petition (and a similar petition subsequently filed by MCI WorldCom Communications, Inc., Brooks Fiber Communications of New York, Inc. and Verizon) would not be resolved in the near future, Northland determined the time was appropriate for Northland to file its own request for pre-emption.

Verizon has offered no valid reason why this Petition should not be granted on an expedited basis. Its motivation for opposing expedition, however, is not difficult to fathom.

Since Verizon has been paying Northland reciprocal compensation rates lower than those that Northland believes are applicable, which presumably Verizon will continue to do until a Commission ruling, further delay will only benefit Verizon while unfairly increasing the economic harm that Northland continues to suffer.

Furthermore, other competitive carriers may be in the same position as Northland. Therefore, removal of the uncertainty regarding this common question, at the earliest possible date, would be in the best interest of all carriers.

Conclusion

For the reasons set forth herein, and in Northland's November 14, 2003, Petition for Pre-Emption, this Commission should grant the Northland Petition, and designate for resolution Issues 1 - 4 as set forth therein by Northland, on an expedited basis.

Respectfully submitted,

Northland Networks, Ltd.

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Dated: Albany, New York
December 19, 2003

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2003, a true and correct copy of the forgoing Reply Comments of Northland Networks, Ltd. was sent by first class mail, postage prepaid, to the following parties at the addresses listed below:

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